

TITLE 16  
DEPARTMENT OF REGULATORY AGENCIES  
CHAPTER 4  
HAWAII INSURANCE GUARANTY ASSOCIATION  
PLAN OF OPERATION

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Historical Note: Chapter 4 of Title 16, Administrative Rules, is based substantially upon Chapter 5, Title V, Department of Regulatory Agencies, entitled "Hawaii Insurance Guaranty Association Plan of Operation." [Eff 11/20/72 R 6/22/81]

SUBCHAPTER 1  
GENERAL PROVISIONS

§16-4-1 Plan of operation. This plan of operation (hereinafter referred to as the plan) has been formulated pursuant to the Hawaii Insurance Guaranty Association Act (hereinafter referred to as the act), as specified in section 431:16-109, HRS. [Eff 6/22/81] (Auth: HRS §431:16-109) (Imp: HRS §431:16-106)

§16-4-2 Membership. Insurers which were admitted as of May 25, 1971 to transact the kinds of insurance covered by the act in the State of Hawaii shall be members of the Hawaii Insurance Guaranty Association. Each insurer admitted after May 25, 1971 to transact the kinds of insurance covered by the act shall automatically become, effective on the date of its admission, a member of the guaranty association. An insurer which ceases to be admitted after May 25, 1971 shall automatically cease to be a member effective on the day following the termination or expiration of its certificate of authority to transact the kinds of insurance covered by the act, provided such insurer shall remain liable for any assessments based on insolvencies occurring prior to the termination of its certificate. [Eff 6/22/81] (Auth: HRS §431:16-109) (Imp: HRS §431:16-106)

## SUBCHAPTER 2

### THE PLAN

§16-4-3 Board of directors. (a) There shall be a board of directors in accordance with the provisions of section 431:16-107, HRS.

- (1) The board of directors shall consist of not less than five nor more than nine member insurers. The board of directors shall be elected by the member insurers and shall fairly represent member insurers. The election shall be by weighted vote based on the net direct premiums for the preceding calendar year, with each member insurer to have at least one vote. In the event the insurance commissioner determines that all member insurers are not fairly represented, the commissioner shall disapprove the membership of the board and order another election. In the interim between such disapproval and the subsequent election, the commissioner may appoint a temporary board of directors which fairly represents the member insurers.
  - (2) Terms of directors shall be staggered as equally as possible between two and three years.
  - (3) Upon the election of subsequent members to the board of directors, the association shall notify the commissioner and request the insurance commissioner's written approval of the members.
  - (4) The members elected to the board of directors shall elect a chairperson and such other officers as they may deem necessary from among their members, each to serve for a period of one year.
- (b) At any meeting of the board, each member of the board shall have one vote. A majority of the board shall constitute a quorum for the transaction

of business and the acts of a majority of the board members present at a meeting at which a quorum is present shall be the acts of the board except that an affirmative vote of a majority of the full board is required to:

- (1) Approve a contract with a servicing facility; or
- (2) Levy an assessment [or provide for a refund]; or
- (3) Borrow money.

(c) Members of the board shall serve without compensation. However, they may be reimbursed for expenses incurred by them as board members. Such expenses shall be submitted to the board for approval and subsequent payment, provided that the approval of a majority of the full board shall be required for a total reimbursement to an individual member exceeding \$100. [Eff 6/22/81] (Auth: HRS §431:16-109) (Imp: HRS §431:16-107)

§16-4-4 Board meetings. (a) An annual meeting of the board shall be held at the office of the commissioner during the month of March, unless the board upon proper notice shall designate some other date or place. At each annual meeting the board shall:

- (1) Review the plan and submit proposed amendments, if any, to the membership for approval or rejection. A majority vote of those voting shall be necessary for approval of amendments;
  - (2) Review each outstanding contract with servicing facilities and, to the extent possible, make any necessary corrections, improvements, or additions;
  - (3) Review operating expenses and covered claims costs and determine if an assessment, or a refund of a prior assessment, and the amount of either, is necessary for the proper administration of the guaranty association. If such assessment or refund is determined to be necessary, the board shall levy such assessment or make such refund in accordance with section 431D-8(a)(3) and (b)(6), HRS. The board may waive the collection from a member insurer when the amount produces an assessment of less than \$10; and
  - (4) Review, consider, and act on any other matters deemed by it to be necessary and proper for the administration of the guaranty association.
- (b) The board may determine a schedule or such other regular meetings as it may deem appropriate. [Eff 6/22/81] (Auth: HRS §431:16-109) (Imp: HRS §431:16-108)

§16-4-5 Emergency meetings. The board shall hold an emergency meeting promptly after receiving notice from the insurance commissioner of the insolvency of any member insurer. At such meeting or a subsequent meeting the board shall:

- (1) Consider and decide whether or not an insurer has, in fact, become an insolvent insurer within the meaning of the act;
- (2) Consider and decide what method or methods, permitted under section 431D-8(a)(6) HRS, shall be adopted to pay and discharge covered claims of the insolvent insurer for each of the kinds of insurance as specified in section 431D-3, HRS, but in no event shall an insolvent insurer be appointed as a servicing facility. If the board decides to appoint a servicing facility, every effort shall be made to secure the receiver's, liquidator's or statutory successor's participation in such contract to assist the guaranty association in the performance of its legally imposed duties. Every effort shall also be made to permit the guaranty association to directly pursue all reinsurance recoveries permitted to the insolvent insurer;
- (3) Consider and decide what immediate action, if any, should be taken to assure the proper retention of the records of the insolvent insurer necessary to the prompt, economical handling by the guaranty association of covered claims. In this effort, the board, or a designated servicing facility, shall work closely with the receiver, liquidator, or statutory successor and seek the liquidator's, receiver's, or statutory successor's approval of having the board, or a designated servicing facility, take direct physical control of that portion of the insolvent insurer's records deemed by the board to be necessary for the discharge of its duties imposed by law;
- (4) Consider and decide what persons, if any, should be hired by the guaranty association to implement and carry out broad directives of the board made pursuant to its statutorily imposed duties. Such persons may include a managing secretary who shall be:
  - (A) Knowledgeable about insurance matters;
  - (B) Conversant with the law as it relates to covered claims;
  - (C) Administratively capable of implementing the board's directives; and
  - (D) Would have such authority as is properly delegated by the board.

Such persons may also include attorneys-at-law, insurance actuaries, accountants, claims adjusters and any others whose advice or services are deemed by the board to be necessary to the

discharge of its duties. The board may agree to compensate such persons as to best serve the interest of the guaranty association and the public;

- (5) Consider and decide to what extent and in what manner the board shall review and contest settlements and releases or judgments, orders, decisions, verdicts, and findings to which the insolvent insurer or its insureds were parties in accordance with sections 431D-8(a)(4) and 431D-18, HRS;
- (6) Consider and decide what assessment, if any, should be levied or whether any refunds should be made to member insurers. If an assessment or refund is determined to be necessary, the board shall levy the assessment or make the refund] in accordance with section [431D-8(a)(3) and (b)(6), HRS. Notices of assessments shall be in sufficient detail as to form a basis for the payment of the assessments by the member insurers. The board may waive the collection from a member insurer when the amount produces an assessment of less than \$10;
- (7) Take all steps permitted by law, and deemed necessary to protect the guaranty association's rights against the estate of the insolvent insurer; and
- (8) Consider and decide any other matter deemed by it to be necessary for the proper administration of the guaranty association. [Eff 6/22/81] (Auth: HRS §431:16-109) (Imp: HRS §431:16-108)

§16-4-6 Special meetings. Special meetings of the board may be called by the chairperson and shall be called at the request of any two board members. Not less than five days written notice shall be given to each board member of the time, place, and purposes of any special meeting, except that an emergency meeting may be held upon at least forty-eight hours oral or written notice, provided each member of the board has reasonable opportunity to attend. Any board member not present may consent or object in writing to any specific action taken by the board. Any action approved by the required number of board members at any special or emergency meeting, including those consenting in writing, shall be as valid a board action as though authorized at a regular meeting of the board. At an emergency meeting, the board may consider and decide any matter deemed by it to be necessary for the proper administration of the guaranty association. [Eff 6/22/81] (Auth: HRS §431:16-109) (Imp: HRS §431:16-108)

§16-4-7 Operations. (a) The official address of the association shall be the address of the chairperson of the board unless otherwise designated by the board.

(b) The board may employ such persons, firms or corporations to perform such administrative functions as are necessary for the board's performance of the duties imposed on the guaranty association. The board may use the mailing address of such a person, firm or corporation as the official address of the guaranty association. Such persons, firms or corporations shall keep such records of their activities as may be required by the board.

(c) The board may open one or more bank accounts for use in the guaranty association business. Reasonable delegation of deposit and withdrawal authority to such accounts for guaranty association business may be made consistent with prudent fiscal policy. The board may borrow money from any person or organization including a member insurer, or from an appointed servicing facility as the board in its judgment deems advantageous for the guaranty association and the public.

(d) The board may levy a non-pro rata assessment not to exceed \$25 to cover the reasonable cost of administering the guaranty association, such assessment to be credited against any subsequent pro rata assessment.

(e) The board may contract with one or more persons, firms or corporations to serve as servicing facilities, should the board receive notice from the insurance commissioner of an insolvency of a member insurer. Such contract terms shall comply with the act and be subject to the approval of the insurance commissioner. Such contract terms may include:

- (1) Terms of payment to the servicing facility.
- (2) Extent of authority delegated to the servicing facility.
- (3) Procedures for giving the receiver timely notice, sufficient to protect the guaranty association's right of subrogation against the receiver, liquidator, or statutory successor, of each and every covered claim not otherwise reported to the receiver, liquidator or statutory successor.
- (4) Procedures contemplated for the handling of covered claims as defined in the act, which procedures shall include the right to request from or offer to any person arbitration of the person's covered claim.
- (5) Procedures for the printing or preparation of forms necessary for the proper handling of covered claims.
- (6) Requirement of bond for faithful performance.
- (7) Any other provisions deemed necessary and desirable by the board.
- (f) In order to effectuate the purposes set forth in section 431D-13,

HRS, the board shall:

- (1) Develop procedures for discovering and reporting to the insurance commissioner any member insurer that may be insolvent or in a financial condition hazardous to the policyholders or the public. No such reports shall be considered public documents.
- (2) At its annual meeting, or at any other meeting called for this purpose, review the insurance law and rules with a view toward making recommendations to the insurance commissioner for the detection and prevention of insurer insolvencies.
- (3) Develop forms for reporting and report the history and causes of each insolvency processed, submit each report to the insurance commissioner, and maintain a continuing file of such reports. [Eff 6/22/81] (Auth: HRS §431:16-109) (Imp: HRS §431:16-108)

§16-4-8 Records and reports. (a) A written record of the proceedings of each board meeting shall be made. The original of this record shall be retained by the chairperson with copies being furnished to each board member and the insurance commissioner, and, upon written request, to any member insurer.

(b) The board shall make an annual report to the insurance commissioner and to the member insurers not later than March 30 of each year. Such report shall include a review of the guaranty association's activities and an accounting of its income and disbursements for the past year.

(c) After the appointment of a receiver, liquidator or statutory successor and the levy of an assessment by the guaranty association, the board shall, once every year, appoint three member insurers, not then represented on the board, to serve as an audit committee. This committee shall see to the proper auditing of all of the books and records of the guaranty association and shall report its findings to the board. The report shall be available to all member insurers, upon written request. [Eff 6/22/81] (Auth: HRS §431:16-109) (Imp: HRS §431:16-108)

§16-4-9 Appeal. Any member insurer aggrieved by an action or decision of the guaranty association shall appeal to the board before appealing to the insurance commissioner. If such member insurer is aggrieved by the final action or decision of the board or if the board does not act on such complaint within thirty days, the member insurer may appeal to the insurance commissioner within thirty days after the action or decision of the board or the expiration of the thirty days. [Eff 6/22/81] (Auth: HRS §431:16-109) (Imp: HRS §431:16-108)

§16-4-10 Indemnification. (a) All persons described in section 431D-17, HRS, except the insurance commissioner and the commission's representatives, shall be indemnified by the guaranty association against all expenses incurred in the defense of any action, suit or proceeding brought against such person on account of any action taken by such person in the performance of such person's powers and duties under the act, unless such person shall be finally adjudged to have committed a breach of duty involving gross negligence, bad faith, wilful misfeasance, or reckless disregard of the responsibilities of such person's office. In the event of settlement before final adjudication, such indemnity shall be provided only if the guaranty association is advised by independent counsel that such person did not, in counsel's opinion, commit such a breach of duty.

(b) The expense of the indemnification herein provided shall be paid for by the member insurers by an assessment levied by the board in accordance with section 431D-8(a)(3), HRS.

(c) Subsection (a) is intended to operate as a supplement and additional safeguard to, and not in place of, the immunity granted by section 431D-17, HRS. [Eff 6/22/81] (Auth: HRS §431:16-109) (Imp: HRS §431:16-108)



DEPARTMENT OF REGULATORY AGENCIES

Chapter 4, Hawaii Insurance Guaranty Association Plan of Operation Rules of Practice and Procedure, on the Summary Page dated May 28, 1981 was adopted on May 28, 1981 following a public hearing held on May 28, 1981, after public notice was given in the Honolulu Star-Bulletin on May 8, 1981.

These rules shall take effect ten days after filing with the Office of the Lieutenant Governor.

/s/ Mary G.F. Bitterman  
MARY G.F. BITTERMAN  
Director of Regulatory Agencies

APPROVED AS TO FORM:

/s/ Alan T. Shimabukuro  
Deputy Attorney General

/s/ George R. Ariyoshi  
GEORGE R. ARIYOSHI  
Governor  
State of Hawaii

Date: June 10, 1981

June 12, 1981  
Filed